

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE IMPERIAL BUFFET & RESTAURANT,
INC. d/b/a MAJESTIC RESTAURANT &
BUFFET

and

Case 22-CA-27468

MAJESTIC BUFFET, INC.

and

NEW MAJESTIC, INC.

and

MING XING CHEN

ORDER¹

New Majestic, Inc.'s petition to revoke subpoenas duces tecum B-629187, B-629188, and B-629189 and subpoenas ad testificandum A-710471, A-710472, and A-710473; Majestic Buffet, Inc.'s petition to revoke subpoena duces tecum B-629200 and subpoena ad testificandum A-710481; and the Respondents' requests for oral argument are denied.² The

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² The General Counsel has reissued several subpoenas to replace the original subpoenas that were printed on

subpoenas seek information relevant to the matter under investigation, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations, and the Petitioners have failed to establish any other legal basis for revoking the subpoenas. See generally *NLRB v. North Bay Plumbing*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

However, we condition our denial of the Respondents' petitions with respect to subpoenas ad testificandum A-710471, A-710472, A-710473, and A-710481 upon the Region supplying subpoenaed witnesses Ki Sang Wong and Tang Ho with a general description of the matters concerning which they will be expected to testify.

outdated forms. The reissued subpoenas are substantially identical to the subpoenas that they replace, except that they contain new subpoena numbers and the signature of the Board's Executive Secretary. We consider the outstanding petitions to revoke the original subpoenas as applying to the reissued subpoenas. The reissued subpoena numbers are as follows: (1) A-857722 replaces A-710481; (2) B-628848 replaces B-629200; (3) A-857723 replaces A-710471; (4) B-628849 replaces B-629187; (5) A-857724 replaces A-710472; and (6) B-628850 replaces B-629188. Although no reissued subpoena corresponds to subpoena A-710473, this subpoena is substantially identical to subpoenas A-710471 and A-710472, except that it is addressed to Ki Sang Wong in care of his attorney. The General Counsel also issued two new subpoenas, A-857721 and B-628847, which do not correspond to specific original subpoenas but are substantially identical to subpoenas addressed to Tang Ho, except for the address listed in the subpoenas. To the extent that the petition to revoke is construed as applying to these subpoenas, it is denied.

Section 102.31(b) of the Board's Rules and Regulations states, in pertinent part, that the Board shall revoke a subpoena if in its opinion the subpoena "does not describe with sufficient particularity the evidence whose production is required." The testimonial subpoenas in this case identify, by name and number, the unfair labor practice case about which testimony is sought. Accordingly, under current Board law, they are sufficiently particularized. See *Offshore Mariners United*, 338 NLRB 745 (2002) (subpoena ad testificandum was not overly broad or vague where it identified unfair labor practice cases by name and number); *Postal Workers Local 64 (USPS)*, 340 NLRB 912 (2003).

However, a difference of opinion has arisen concerning whether *Offshore Mariners* and *Postal Workers Local 64 (USPS)* were correctly decided. Specifically, there is disagreement concerning (1) whether the particularity requirement of Section 102.31(b) of the Board's Rules and Regulations applies to a subpoena ad testificandum, and (2) if the particularity requirement does apply, whether a subpoena ad testificandum must describe the testimony sought, as well as identify the relevant unfair labor practice case by name and number. Without deciding these issues, we shall require the Region to provide the subpoenaed witnesses with a general description of the

matters concerning which they will be expected to testify.³ This would include, but shall not be limited to, the identity and ownership of assets owned, retained, or transferred by the Respondents, and the manner of the transfer or disposition of the assets; and the nature of the cessation of Respondent New Majestic's restaurant, the identity of any transferees, and any potential reopening of the business.⁴ This Order shall be nonprecedential.

Dated, Washington, D.C., April 8, 2009.

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

³ Chairman Liebman would adhere to existing precedent on this issue. For institutional reasons, however, she joins her colleague in requiring the Region to provide the subpoenaed witnesses with a general description of the matters concerning which they will be expected to testify.

⁴ Because there is a Board order in the unfair labor practice case, and the subpoenas arise out of subsequent compliance investigations, we shall not require that the underlying unfair labor practice charge be provided.